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No. 71-969

In the Supreme Court of the United States

OCTOBER TERM, 1971

CENTURY ARMS, INC., PETITIONER

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, 1a) is reported at 449 F.2d 1306. The opinion of the district court (Pet. App. D, 6a-36a) is reported at 323 F. Supp. 1002.

JURISDICTION

The judgment of the court of appeals was entered on November 8, 1971. The petition for a writ of certiorari was filed on January 31, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Gun Control Act of 1968 justifies the refusal by the Secretary of the Treasury to allow importation after the effective date of that Act of certain military surplus firearms covered by import licenses issued prior to that date by the Office of Munitions Control of the Department of State.

STATUTES INVOLVED

The pertinent provisions of the Gun Control Act of 1968, 18 U.S.C. 921-925, and the Omnibus Crime Control and Safe Streets Act of June 19, 1968, P. L. 90-351, 82 Stat. 197, are set forth in Appendix C of the petition, pp. 3a-5a (wherein the Gun Control Act of 1968 is erroneously titled "The Crime Control Act of October 23, 1968").

STATEMENT

This is an action in which petitioner, a corporation engaged in the importation and sale of firearms, seeks declaratory relief against the Secretary of the Treasury's interpretation of certain provisions of the Gun Control Act of 1968, 18 U.S.C. 921-925, and an order compelling the Secretary to allow it to complete the importation of a large number of surplus military firearms which it has purchased from various foreign governments.[1]

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[1] As the district court pointed out, "'[i]mportation' is used here, in a narrow sense, as the guns are physically in the United States, but are being held in bonded warehouses * * *. When we speak of the Secretary's refusal to allow Century to 'import' the

The Gun Control Act of 1968 was enacted on October 22, 1968. Certain provisions of the Act became effective on that date, including 18 U.S.C. 922(*l*) and 925(d) (Section 105(b), 82 Stat. 1226). Taken together, insofar as is pertinent here, these provisions made it "unlawful for any person knowingly to import or bring into the United States * * * any firearm * * * [except that] [t]he Secretary [of the Treasury] may authorize a firearm * * * to be imported or brought into the United States * * * if the person importing or bringing in the firearm * * * establishes to the satisfaction of the Secretary that the firearm * * * is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms. * * *."[2]

This litigation arose as a result of the refusal by the Secretary of Treasury to allow petitioner to import certain surplus military firearms after October 22, 1968. In purchasing the firearms in question and ar-

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guns, then, we mean refusal to allow Century to remove the guns from the warehouses and resell them to its customers" (Pet. App. D. 7a).

[2] Under prior law, there were no such restrictions placed upon the importation of surplus military firearms. Pursuant to the Federal Firearms Act, 15 U.S.C. (1964 ed.) 901-909, each importer was required merely to obtain, at a cost of $25 per year, a general import license from the Secretary of the Treasury, and, in accordance with regulations issued under the Mutual Security Act of 1954, 22 U.S.C. 1934, to obtain from the State Department's Office of Munitions Control, a separate license for each shipment of imported firearms. Under the Mutual Security Act of 1954, "[t]he President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition, and implements of war * * *." 22 U.S.C. 1934(a).

ranging for their importation, petitioner had relied upon licenses issued to it prior to October 22, 1968, by the Office of Munitions Control of the Department of State pursuant to the Mutual Security Act of 1954. These licenses had been stamped "Not Valid After December 15, 1968."[3]

Petitioner contends that Congress did not intend to revoke authorization to import surplus military firearms under outstanding licenses as of October 22, 1968. Accordingly, petitioner argues that, notwithstanding the provisions of the Gun Control Act, it was entitled to import the firearms in question after October 22, 1968. The district court rejected this argument and granted the government's motion to dismiss, holding that the Gun Control Act prohibited any commercial importation of surplus military firearms after October 22, 1968, and that, so interpreted, the Act did not deny to petitioner due process of law.[4] The court of appeals affirmed on the opinion of the district court.

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[3] This was the day before the Omnibus Crime Control and Safe Streets Act of June 19, 1968, P. L. 90-351, 82 Stat. 197, was to go into effect. Normally, licenses issued by the Office of Munitions Control were valid for six months. However, apparently because the Office recognized that the licenses issued by it would be inconsistent with the prohibition against importation contained in that Act (see pp. 5-6, *infra*), it was stamping its licenses "Not Valid After December 15, 1968" (Pet. App. D, 15a).

[4] The district court reviewed at length several possible constitutional objections to the Gun Control Act and found them all to be lacking in substance (Pet. App. D, 24a-36a). Although petitioner asserts that it will suffer severe financial hardship if the decisions below stand (Pet. 9-12, 14), it does not renew its challenge to the constitutionality of the Act.

ARGUMENT

The Gun Control Act of 1968 imposed an immediate prohibition against the importation of all firearms (18 U.S.C. 922(*l*)); this prohibition was made subject only to the discretionary power of the Secretary of the Treasury to authorize the importation of certain limited classes of firearms not including surplus military firearms (18 U.S.C. 925(d)). The Secretary was not empowered to authorize the importation of surplus military firearms by petitioner and petitioner does not contend otherwise. Petitioner's argument is that the Act must be read as also containing an implied exception in favor of those importers who, like petitioner, on October 22, 1968, held import licenses issued by the Office of Munitions Control of the Department of State. This argument was rejected by the courts below in holding, after an extensive review of the language and history of the Gun Control Act, that the Act prohibited importation of all surplus military firearms after October 22, 1968, including firearms, such as those involved here, which were authorized for importation under prior law but not brought into the United States before October 22, 1968. This conclusion not only is consistent with the clear, prohibitory language of the Act but also seems required by its legislative history, which reveals a Congressional purpose to render ineffective import licenses such as those held by petitioner.

The Gun Control Act was an amendment to the Omnibus Crime Control and Safe Streets Act of 1968, P. L. No. 90-351 (hereafter Crime Control Act).

which was enacted on June 19, 1968. Title IV of the Crime Control Act was designed in part to control firearms traffic through a comprehensive licensing system, applicable to manufacturers, importers, and dealers, to be administered by the Secretary of the Treasury (Pet. App. D. 11a-12a). The provisions relating to firearms importation were essentially identical to those subsequently contained in the Gun Control Act, except that the Secretary of the Treasury was also empowered to authorize the importation of certain surplus military rifles and shotguns (Section 922(j) and 925(d)). The Crime Control Act, including the firearms importation provisions, was to go into effect 180 days after its enactment (Section 907), *i.e.*, December 16, 1968.

In June 1968, bills were introduced in both the Senate and the House of Representatives to extend the prohibitions of Title IV to cover all surplus military rifles and shotguns (Pet. App. D. 15a); those bills led to the enactment of the Gun Control Act on October 22, 1968. Senator Dodd, sponsor of the Senate bill, urged implementation of an immediate effective date, calling attention to the fact that importers were taking advantage of the delayed effective date of the Crime Control Act (Pet. App. D. 15a); he further stated: "We did not pass [the Crime Control Act] to give these gun-runners 6 months to flood the Nation with foreign-made and military surplus firearms and to put more guns into the hands of criminals" (114 Cong. Rec. 20129 (1968)). Alarm over long gun imports was also expressed in the House of Representatives (Pet. App. D. 16a-17a). The final version of the Act con-

taired an immediate effective date for the import provisions and an effective date of December 16, 1968, to coincide with the effective date of the Crime Control Act, for other provisions.

Thus the legislative history shows that it was the "rapid rate at which imports of firearms were rising in the first months of 1968" (Pet. App. D, 24a) and the spectre of these guns being put into the hands of criminals, that made Congress decide to halt immediately the flow of such weapons into the United States instead of adhering to the 180 day grace period originally provided in the Crime Control Act. It was recognized in Congress that the acceleration of the effective date coupled with an extension of the flat prohibition against importation to all surplus military firearms might create difficulties for some licensed importers, but Congress evidently judged that any such difficulties were outweighed by the public's need to be protected against further shipments of guns: Senator Dodd observed that "corrective action may pose a problem to the administration of those licenses already issued," thus acknowledging that his legislation would not leave outstanding licenses unaffected, but concluded that Congress nevertheless should "take steps to prevent the further unchecked flow of guns into this country in the coming months"[5] (114 Cong. Rec. 20129 (1968)).

[5] Petitioner asserts that these statements by Senator Dodd support its construction of the Act. See Pet. 14. But they were made by the Senator in the course of offering an amendment to accelerate the effective date of the Act; the whole point of the amendment was to undercut the effort by importers such as petitioner, "to import just as many firearms as possible before December 15, 1968, the effective date of Title IV of the crime bill." (114 Cong. Rec. 20128 (1968)).

In this context it is understandable that the Gun Control Act contained no saving clause for or exception in favor of outstanding import licenses: none was intended.[6]

Against this conclusion petitioner argues, as it did below, that the discretion granted to the Secretary of the Treasury to *authorize* imports is merely a licensing power and that the Congressional refusal to extend this power to the importation of surplus military firearms manifested an intent only "to curtail [the Secretary's] future authority to issue licenses and not his obligation to honor outstanding and otherwise valid licenses" (Pet. 12).[7] Implicit in this argument is the unsupported assertion that the congressional intent "was to permit outstanding licenses to expire by their own terms" (Pet. 14-15).

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[6] The absence of any saving clause here for licenses issued under the Mutual Security Act of 1954 may be contrasted with the provision of the Crime Control Act explicitly protecting the validity of licenses issued under the Federal Firearms Act (Section 907). When Congress wants to protect licenses issued under superseded statutes, it knows how to do so.

[7] Petitioner cites Executive Order No. 11432, transferring licensing functions from the Office of Munitions Control to the Secretary of Treasury, as being consistent with this view (Pet. 12-13). However, as the district court pointed out, the Order may be more easily read "as complementary to a construction of the statute which would effect an immediate ban on the importation of all surplus military firearms" (Pet. App. D, 21a). Certainly the latter was "[t]he contemporaneous construction of the Act by the agency entrusted with its administration," (*Federal Housing Authority* v. *The Darlington, Inc.*, 358 U.S. 84, 90), and as such should be accorded more than ordinary deference. See also *Udall* v. *Tallman*, 380 U.S. 1, 16; *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 434.

Petitioner's argument might be justified if the Gun Control Act had merely transferred licensing authority from the Office of Munitions Control to the Secretary of the Treasury. However, as stated previously, the Act did more: it imposed a new and immediate prohibition against importation subject only to the Secretary's exemption power. Thus the district court properly pointed out that:

> [Petitioner's] argument loses force when the provisions of the statute are read together. Section 922(*l*) [of the Gun Control Act], which must be the starting point, effects an immediate ban on the importation or bringing into the country of all firearms. It says nothing about "authorizing" imports. Section 925—Relief from Disabilities—goes on to allow the Secretary to authorize an exemption for certain classes of imports [Pet. App. D, 20a].

The court therefore correctly concluded that the Secretary of the Treasury was not "assuming retroactive authority and revoking existing licenses, but rather * * * [was] refusing to grant an exemption, which he had no authority to grant, to an existing prohibition—a course of action which concededly entailed a collateral effect on existing licenses" (Pet. App. D, 20a). Thus even if the Secretary of the Treasury is viewed as having only a licensing power, as petitioner suggests, petitioner's own license nevertheless was legislatively revoked by the broad prohibition against importation; as the district court correctly found, "[t]he clear implication of the enactment of an immediate effective

date for Sections 922(*l*) and 925(d) of the Gun Control Act * * * is that the Congress had never intended that the passage of strong controls over the import of firearms be preceded by a 'grace period' during which gun importers could stockpile enough firearms to emasculate the new law for several years to come" (Pet. App. D. 23a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1972.

☆ U.S. Government Printing Office: 1972—460-132/562